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MATSON NAVIGATION COMPANY,
INC.

LODGED

MAR 17 2006
11:00 am
CLERK, U. S. DISTRICT COURT
DISTRICT OF HAWAII

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

MAR 28 2006
at 8 o'clock and 50 min. A.M.
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

BERT MEYER,

Plaintiff,

vs.

MATSON NAVIGATION COMPANY,
INC., and PACIFIC LIVESTOCK,
INC.,

Defendants.

CIVIL NO. 1:04cv 00049JMS-BMK
(In Admiralty)

ORDER DENYING DEFENDANT
PACIFIC LIVESTOCK, INC.'S
MOTION FOR LEAVE TO FILE
THIRD PARTY COMPLAINT FILED
ON JANUARY 30, 2006

HEARING

Date: March 10, 2006

Time: 1:30 p.m.

Judge: Magistrate Barry M. Kurren

Trial Date: June 14, 2006

Judge: Hon. L. Michael Seabright

**ORDER DENYING DEFENDANT PACIFIC LIVESTOCK, INC.'S
MOTION FOR LEAVE TO FILE THIRD-PARTY
COMPLAINT FILED ON JANUARY 30, 2006**

Defendant Pacific Livestock, Inc.'s ("Pacific Livestock") Motion for Leave to File Third-Party Complaint, filed on January 30, 2006, ("Motion") having come on for hearing before Magistrate Judge Barry M. Kurren on March 10, 2006 at 1:30 p.m., with John R. Lacy, Esq. and Randolph L.M. Baldemor, Esq. appearing on behalf of Defendant Matson Navigation Company, Inc. and Thomas E. Irons, Esq. appearing on behalf of Pacific Livestock, and Plaintiff Bert Meyer taking no position on the Motion;

The Court, having reviewed the Motion, the memoranda, declarations and exhibits filed in support and opposition to the Motion, and having heard the argument of counsel made at the hearing, and good cause appearing therefore;

The Court hereby finds that Matson Terminals, Inc. ("Matson Terminals") was Plaintiff Bert Meyer's "employer" for purposes of the Longshore and Harbor Workers Compensation Act, 33 U.S.C. §901 et al., ("LHWCA") and Pacific Livestock's proposed cross-claim is "on account of" the accident alleged herein by Plaintiff Bert Meyer;

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Pacific Livestock's Motion is denied on the grounds that the proposed third-party complaint, which seeks to add Matson Terminals as a third-

party defendant in this lawsuit, is barred pursuant to 33 U.S.C. §905(a) and is, therefore, futile. *See Zapico v. Bucyrus-Erie Co.*, 579 F.2d 714 (2nd Cir. 1978).

DATED: Honolulu, Hawaii, 3 - 27, 2006.



JUDGE OF THE ABOVE-ENTITLED COURT

Bert Meyer vs. Matson Navigation Company, Inc.; and Pacific Livestock, Inc.,
Civil No. 1:04cv 00049 JMS-BMK; Order Denying Defendant Pacific Livestock,
Inc.'s Motion for Leave to File Third Party Complaint filed on January 10, 2006